LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Twenty-Second Annual Report
April 1, 2012 to March 31, 2013

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OF
NOVA SCOTIA

TWENTY-SECOND ANNUAL REPORT

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The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

The Commissioners for 2012-2013:

Anthony L. Chapman, President (until June 2012)
Darlene Jamieson, Q.C., President (as of June 2012)
Professor Robert J. Currie, Vice-President (as of June 2012)
Justice Kevin Coady
Dr. Brian R. Joseph
D. Peter Mancini
Dr. John L. McMullan
Richard J. Melanson (appointed September 2012)

The Commission staff in 2012-2013:

Angus Gibbon
Executive Director

Ilana Luther
Legal Research Counsel

Andrea Davidson
Administrative Assistant

William H. Charles, Q.C.
Special Counsel

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The work of the Law Reform Commission of Nova Scotia for the fiscal year April 1, 2012-March 31, 2013 was funded by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Commission gratefully acknowledges this financial support.

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OVERVIEW OF THE COMMISSION

The Law Reform Commission of Nova Scotia was created in 1991, under the *Law Reform Commission Act*. The Commission reviews Nova Scotia's laws and makes recommendations for their improvement, modernization and reform.

The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia.

The Commission is funded jointly by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to law, legal education, and the administration of justice, obtains its funds from the interest on lawyers' trust accounts.

The Commissioners are appointed from different sectors of the community, including: (a) a judge of a court of the Province; (b) two members of the Nova Scotia Barristers' Society; (c) a member of the faculty of the Schulich School of Law, Dalhousie University; and (d) up to three other persons appointed by the provincial Cabinet. At least one of the Commissioners must not be a graduate in law.

The Commission employs a full-time staff of three: the Executive Director, Legal Research Counsel, and an Administrative Assistant. As well, the Commission continues to benefit from the contributions of Professor William H. Charles, Q.C., as Special Counsel to the Commission. Professor Charles has provided valuable assistance with respect to all Commission projects during the past year.

The Commission has published 49 project papers and reports, and 21 annual reports. All publications can be downloaded without cost from the Commission's website.

Since it began operation in 1991, many of the Commission's recommendations have been adopted directly in new legislation or improvements to existing statutes. One of the Commission's first reports led to the creation of Nova Scotia's family maintenance enforcement program, under the *Maintenance Enforcement Act*. The Commission's reports on probate law and the law of wills resulted in a new *Probate Act* in 2000 and significant reforms to Nova Scotia's *Wills Act* in 2006. Its 2003 report on builders' liens resulted in the enactment of a new *Builders' Lien Act* in 2004. The Commission's recommendations in relation to mental health law formed the basis for many of the provisions of the *Involuntary Psychiatric Treatment Act* of 2005. A report on substitute decision-making for personal care decisions provided background for the *Personal Directives Act* of 2008. The Commission's 2006 report on vexatious litigants resulted in amendments to the *Judicature Act* in 2009, to deal with those who unduly strain the time and resources of Nova Scotia courts.

More recently, the Government of Nova Scotia has enacted regulations under the *Environment Act* in respect of contaminated sites, relying on the Commission's 2009 report on that topic. The regulations came into effect on July 6, 2013. In 2011, the provincial legislature passed legislation to abolish an antiquated and troublesome rule of law called the rule against perpetuities, following the Commission's 2010 report recommending the abolition of that rule. In May of 2012 the legislature passed legislation to amend the *Maintenance and Custody Act*, expressly confirming the rights of grandparents to apply for access rights to grandchildren, following the Commission's 2007 recommendation to that effect. The Commission's most

recent report, on the *Builders' Lien Act*, resulted in amendments to improve the process for paying out lien holdbacks. The legislation was passed in May of 2013.

THE YEAR IN REVIEW 2012-2013

Work Program and Publications

Enforcement of Civil Judgments

This project has its origins in the Commission's work in 2009 evaluating the Small Claims Court. In survey research, users of the Small Claims Court expressed general satisfaction with the workings of that court, but were frustrated with the process for enforcing, or collecting on, judgments. The Attorney General asked the Commission to examine the issue of enforcement in the civil justice system at large. This is an important project involving both access to, and the effectiveness of, the justice system.

The project includes a specific issue relating to the seizure of judgment debtors' wages. This issue first arose during the drafting of Nova Scotia's new *Civil Procedure Rules*, and was referred to the Commission for study by the Attorney General. The Commission decided that the question could be best dealt with in the context of the broader civil judgment enforcement project.

The project examines the various statutes, regulations and rules that govern a disparate array of enforcement processes, with the aim of streamlining and simplifying the system. The project also considers modernization and enhancement of the powers of enforcement officers, in order to better effect recovery of elusive or intangible assets. Finally, the project aims to modernize Nova Scotia's provisions for exempt assets and income, to ensure that judgment debtors and their families are not deprived of the means to function as healthy, productive and continuing members of society.

The Commission published a Discussion Paper in December 2011. The paper proposed substantial adoption of the Uniform Law Conference of Canada's *Uniform Civil Enforcement of Money Judgments Act*. The Commission received a number of public submissions that took issue with, among other things, the *Uniform Act*'s provisions for exempting a portion of the debtor's income from seizure. The Commission undertook substantial further research and deliberation, and published a second Discussion Paper in February of 2013, specific to the issue of the income exemption. The Commission expects to publish a Final Report during the 2013-2014 fiscal year.

Builders' Lien Act

In March of 2010, the Attorney General requested the Commission's recommendations with regard to the release of holdbacks under the *Builders' Lien Act* of 2004. As well, the project examines whether and to what extent the Small Claims Court ought to have jurisdiction over builders' lien matters.

The Commission published a Discussion Paper in March of 2012, and a Final Report in March of 2013. The Commission recommended amendments to improve the release of holdbacks, and to permit the Small Claims Court to decide the substance of lien actions by way of a

reference from the Supreme Court. The Commission's recommendations regarding holdbacks were adopted into legislation in May of 2013.

Powers of Attorney Act

In March of 2010, the Attorney General asked the Commission to provide its general recommendations regarding the improvement and modernization of the Nova Scotia *Powers of Attorney Act*. The *Act* is significantly out of date, and its deficiencies have propelled recent litigation and piecemeal reform legislation. The legislation in other Canadian jurisdictions is far more modern and expansive, particularly with regard to the duties of the attorney and the protection of the donor. The project provides an opportunity to strengthen Nova Scotia's laws for the protection of seniors, and others who rely on substitute decision-makers.

The Commission convened a project advisory group, consisting of practitioners with expertise in estate planning and elder law, the CEO of the Nova Scotia Department of Seniors, an RCMP senior safety coordinator, and the Nova Scotia Public Trustee. The group held a series of meetings in the Spring and Summer of 2012 with the aim of developing preliminary proposals for the Commission's consideration. The Commission has begun to consider an extensive draft Discussion Paper prepared by Commission staff on the basis of the advisory group's deliberations, as well as further research and consultation. The Commission expects to publish a Discussion Paper in the 2013-2014 fiscal year.

Matrimonial Property Act

In April of 2012, the Commission decided to review the Nova Scotia *Matrimonial Property Act*. It has been 30 years since the *Act* came into force, and it has not been substantially amended since then. Family law stakeholders, and in particular the practicing bar and academic commentators, have indicated that the *Act* is in need of review in a number of areas. The *Act* affects a large number of Nova Scotians - family law litigation representing a substantial proportion of contested matters in Nova Scotia courts. A number of other jurisdictions have substantially reformed their matrimonial property legislation in recent years.

In March of 2013, in the course of its preliminary research and consultation, the Commission published two on-line surveys to solicit the views of Nova Scotians on potential areas for reform. Commission staff have begun to meet with relevant stakeholder groups. These consultations and further legal and sociological research by Commission staff will inform the deliberations of the project advisory group. The Commission expects to convene the group in the Fall of 2013.

Internal Administration and Organization

In June of 2012 the Commission's President, Anthony L. Chapman, Q.C., resigned from the Commission, after serving with energy and distinction as a Commissioner from 2004, and as President since 2007. He was succeeded as President by Darlene Jamieson, Q.C., a practitioner with the Halifax law firm Merrick Jamieson Sterns Washington & Mahody. Also in June 2012, the Commission appointed Professor Robert Currie, of the Schulich School of Law at Dalhousie University, as Vice-President.

In September of 2012, Mr. Richard J. Melanson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society. Mr. Melanson practices law with the Halifax law firm of Blois Nickerson & Bryson LLP.

Funding & Finances

The Commission's financial statement for the year ending 31 March 2013 is attached to this report as an Appendix.

During the reporting period, the Commission received operational funding in the amount of $106,744.00 from the Law Foundation of Nova Scotia, and $184,824.00 from the Government of Nova Scotia.

The Commission incurred an operating deficit of $9,306.62. Funding from the Law Foundation for 2012-13 was reduced by 25%, on top of reductions in previous years, due to persistently low interest rates. The deficit was smaller than projected, due to significant cost-cutting where possible. The Commission expects to incur a slightly larger deficit in the 2013-2014 fiscal year.

COMMISSIONERS 2012-2013

Anthony L. Chapman Q.C., President (to June 2012)
Mr. Chapman was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2004. He has been a member of the Nova Scotia Bar since 1980. A partner in the Halifax office of the law firm Cox & Palmer, Mr. Chapman specializes in corporate/commercial law, real property law, secured transactions, and environmental law. Mr. Chapman was appointed President in 2007. He resigned from the Commission in June of 2012.

Darlene Jamieson Q.C., President (since June 2012)
Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society. Ms. Jamieson was appointed as President of the Commission in June of 2012.

Robert J. Currie, Vice-President (since June 2012)
Professor Currie was appointed to the Commission by Order in Council in January 2010. He is an Associate Professor at the Schulich School of Law, Dalhousie University, and Director of Dalhousie's Law & Technology Institute. He is a specialist in the area of international and transnational criminal law, and is the author of numerous books, articles and comments in that field. In 2008, Professor Currie was awarded the Dalhousie Law Students' Society and Alumni Association Award for Excellence in Teaching. He has been a member of the Nova Scotia Bar since 2000.

Kevin Coady
Mr. Justice Coady was appointed to the Commission by Order in Council in December 2007. Justice Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with Coady Filliter and taught Criminal Law at Dalhousie University.

Brian R. Joseph
Dr. Joseph was appointed to the Commission by Order in Council in April 2010. He is a graduate of St. Francis Xavier University (B.Sc. and B.A. Hons) University of Toronto (M.A.) and Harvard University (A.M. and Ph.D). Dr. Joseph has taught at Dalhousie, Saint Mary's, St. Francis Xavier, and Cape Breton universities. He has served in the Nova Scotia Attorney General's Department and the Privy Council Office, Government of Canada.

D. Peter Mancini
Mr. Mancini was appointed to the Commission by Order in Council in June 2011. He attended Dalhousie University where he earned a B.A. (Honours) degree, major in Political Science before entering Dalhousie Law School and earning a LLB. He has practiced with Nova Scotia Legal Aid for 25 years, taking two leaves of absence. He taught at Cape Breton University and was a Member of Parliament for the riding of Sydney Victoria. During that period he was a member of the standing committee on Justice and Human Rights. In 2001 he returned to Nova Scotia Legal Aid as a full time staff lawyer with a focus on Criminal Law. In 2010 he was named the Service Delivery Director for Nova Scotia Legal Aid and joined the executive branch

of the organization. He has presented at criminal law conferences and family law conferences sponsored by the Nova Scotia Barristers' Society, Canadian Bar Association, and the Criminal Lawyers Association.

John L. McMullan
Dr. McMullan was appointed to the Commission by Order in Council in February 2006. He is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

Richard J. Melanson
Mr. Melanson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in September of 2012. He is a partner with the Halifax law firm of Blois, Nickerson & Bryson LLP. His areas of practice include administrative law, bankruptcy and insolvency, civil litigation, corporate & commercial, intellectual property and real estate. Mr. Melanson graduated from the Université Sainte-Anne with a Bachelor of Arts (Honours) in 1981, and a Bachelor of Education (Honours) in 1983. In 1988 he graduated from Dalhousie Law School as Gold Medalist. He is a member of the Board of Examiners of Nova Scotia Social Workers' Association and chair of the Discipline Committee, and has been a member of the Agreement on Internal Trade Working Group. He is a Director and current Treasurer of Canadian Parents for French - Nova Scotia.

STAFF

Angus Gibbon
Executive Director
Mr. Gibbon joined the Commission as Legal Research Counsel in August 2009, and was appointed Executive Director in April of 2011. A graduate of Acadia University, he received his law degree from the University of Toronto in 1999, followed by a Doctor of Philosophy from the University of Toronto in 2005. Mr. Gibbon was called to the Nova Scotia Bar in 2004 and was in general private practice before joining the Commission. He is on the part-time faculty of the Schulich School of Law at Dalhousie University.

Ilana Luther
Legal Research Counsel
Ms. Luther joined the Commission in June 2011. After receiving her Bachelor of Arts from Carleton University, she received a Master of Arts in Political Science from York University. In 2004, Ms. Luther received her law degree from Osgoode Hall Law School, followed by a Master of Laws from Harvard Law School. She has worked for legal aid both in Ontario and in Nova Scotia. She is currently a Doctoral candidate at the Schulich School of Law (Dalhousie University).

Andrea Davidson
Administrative Assistant
Ms. Davidson joined the Commission in May 2008. She has a strong administrative background with an emphasis on the travel industry.

William H. Charles, Q.C.
Special Counsel
Professor Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

APPENDIX - FINANCIAL REPORT FOR THE 2012-2013 FISCAL YEAR

Income Statement as at 3/31/13

REVENUE			
Department of Justice		184,824.00	
Nova Scotia Law Foundation		106,744.00	
Interest Income		575.85	
TOTAL REVENUE			**292,143.85**
EXPENSES			
Wages	226,144.55		
EI Expense	3,594.67		
CPP Expense	6,782.02		
Group Insurance Expense	5,132.20		
TOTAL PERSONNEL EXPENSE		241,653.44	
Advertising	0.00		
Commissioners Fees & Expenses	4,488.71		
Electrical Expense	790.94		
Meeting Costs	692.43		
Library	2,109.40		
Accounting Fees	45.00		
Membership Dues	1,886.46		
Computer Software/Supplies/Repairs	1,646.02		
Internet	1,258.80		
Staff Expenses	476.46		
Rent	31,492.37		
Office Equipment Rental	2,140.25		
Insurance	1,170.00		
Office Supplies	1,718.73		
Photocopy/Printing	1,568.70		
Postage & Courier	569.22		
Telephone Expense	2,636.59		
Travel/Conference/Workshop	1,241.96		
Staff Dev. & Registration Fee	0.00		
Office Equipment Maintenance	0.00		
Bank Charges	69.22		
HST Paid on Purchases	3,795.77		
TOTAL ADMINISTRATION & OFFICE EXPENSE		59,797.03	
TOTAL EXPENSE			**301,450.47**
NET INCOME			**(9,306.62)**

Balance Sheet as at 03/31/2013

ASSETS				
CURRENT ASSETS				
Petty Cash	25.00			
Bank Operating Account	5,647.64			
Cashable GICS	242,601.35			
T-Bill Account	0.00			
Total Cash		248,248.99		
HST Receivable		3727.70		
Total current assets			252,001.69	
FIXED ASSETS				
Computer Equipment	19,059.16			
Accum. Computer Equipment	-19,069.16			
Net Office Equipment	0.00			
Total fixed assets			0.00	
TOTAL ASSETS				**252,001.69**
LIABILITIES				
CURRENT LIABILITIES				
Vacation Payable	0.00			
UIC Payable	0.00			
CPP Payable	0.00			
Income Tax Payable	0.00			
Receiver General Payable	0.00			
Accrued Income	184,824.00			
TOTAL LIABILITIES				**184,824.00**
EQUITY				
SURPLUS				
Surplus Beginning of Year	76,484.31			
Surplus Current Year	(9,306.62)			
Accumulated surplus	67,177.69			
TOTAL EQUITY				**67,177.69**
LIABILITIES AND EQUITY				**252,001.69**